IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 11

DEWEY McLAUGHLIN, *et al.*,

Appellants,

—v.—

FLORIDA.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

BRIEF FOR APPELLANTS

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Opinion Below

The Criminal Court of Record In and For Dade County, Florida did not render an opinion. The opinion of the Supreme Court of Florida is reported in 153 So. 2d 1 (1963) (R. 99).

Jurisdiction

Appellants were convicted in the Criminal Court of Record In and For Dade County, Florida, on June 24, 1962 of violating Florida Statutes Annotated §798.05. They appealed to the Supreme Court of Florida, contending that the convictions and the Florida laws involved violated the equal protection and due process clauses of the Fourteenth Amendment. On May 1, 1963, the Supreme Court of Florida affirmed the convictions and decided in favor of the validity of F. S. A. §798.05 under the Constitution of the United

States (R. 99). Petition for rehearing in the Supreme Court of Florida was denied May 30, 1963 (R. 105).

Appellants filed Notice of Appeal in the Supreme Court of Florida on August 29, 1963 (R. 106), and a Jurisdictional Statement in this Court, October 28, 1963. Probable jurisdiction was noted April 27, 1964 (377 U. S. 974). Jurisdiction of this Court on appeal rests on 28 U. S. C. §1257(2). *Williams* v. *Bruffy*, 96 U. S. 176, 182-184. Appellants, moreover raised substantial questions as to the constitutionality of their convictions under the Fourteenth Amendment.

Constitutional and Statutory Provisions Involved

1. Petitioners were convicted of violating F. S. A. §798.05 (Vol. 22, Title 44, p. 277) which provides:

> §798.05—*Negro man and white woman or white man and negro woman occupying same room.*
>
> Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall each be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars.

2. This case also involves Fla. Const., Art. 16, §24 (Volume 26A, p. 450):

> §24—*Intermarriage of white persons and negroes prohibited.*
>
> All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited.

3. F. S. A. §741.11 (Vol. 21A, Title 42, p. 58):

§741.11—*Marriages between white and negro persons prohibited.*

It is unlawful for any white male person residing or being in this state to intermarry with any negro female person; and it is in like manner unlawful for any white female person residing or being in this state to intermarry with any negro male person; and every marriage formed or solemnized in contravention of the provisions of this section shall be utterly null and void, and the issue, if any, of such surreptitious marriage shall be regarded as bastard and incapable of having or receiving any estate, real, personal or mixed, by inheritance.

4. F. S. A. §741.12 (Vol. 21A, Title 42, p. 59):

§741.12—*Penalty for intermarriage of white and negro persons.*

If any white man shall intermarry with a negro, or if any white woman shall intermarry with a negro, either or both parties to such marriage shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars.

5. F. S. A. §1.01 (Vol. 1, Title 1, p. 124):

§1.01—Definitions.

. . . (6) The words "negro", "colored", "colored persons", "mulatto" or "persons of color", when applied to persons, include every person having one-eighth or more of African or negro blood.

6. This case also involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Questions Presented

Whether the conviction of appellants violates the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, where:

(1) The State has created an offense, F. S. A. §798.05, expressly defined in terms of race which punishes interracial couples for engaging in certain conduct while not punishing such conduct by two persons of the same race?

(2) Appellants were denied a full jury consideration of an ingredient of the crime, i.e. the absence of a common law marriage, by jury instructions based on Florida's laws prohibiting Negroes and whites from marrying?

(3) There was either no evidence to satisfy Florida's racial definition in F. S. A. §1.01(6)—an essential part of the crime created by F. S. A. §798.05—or the definition is so vague and indefinite as to establish no standard of criminality?

Statement

Appellants were arrested February 28, 1962 and charged with having violated F. S. A. §798.05 in that "the said Dewey McLaughlin, being a Negro man, and the said Connie Hoffman, also known as Connie Gonzalez, being a white woman, who were not married to each other, did habitually live in and occupy in the nighttime the same room" (R. 3). Appellants were convicted by a jury and each was sentenced to thirty days in the County Jail at hard labor and fined $150.00, plus costs, and in default of such payment to an additional 30 day term (R. 7-9).

In April 1961, appellant Connie Hoffman began residing in an "efficiency" apartment at 732 Second Street, Miami Beach, Florida (R. 22). The landlady testified that she

first saw appellant Dewey McLaughlin in either December, 1961 or February, 1962 (R. 23, 25). She questioned Connie Hoffman about the identity of Mr. McLaughlin and was told he was her husband (R. 3). Appellant Hoffman then "signed in" Mr. McLaughlin as her husband (R. 23). Mr. McLaughlin, born in Honduras, but apparently an American citizen, was then employed by a Miami Beach hotel (R. 82).

The landlady claimed that appellants thereupon began living together for a period of ten or twelve days (R. 24, 26). She stated that she observed McLaughlin showering in the bathroom one evening, heard him talking to appellant Hoffman at 10:00 at night, and noticed his clothing hanging in the apartment (R. 29, 30, 26). Moreover, she saw him going in and out of the apartment during this period (R. 29). Although she claimed to see McLaughlin enter the apartment every evening, she was not certain that he in fact remained there through the night (R. 26, 29, 30). Although she saw McLaughlin leave appellant Hoffman's apartment at least twice early in the morning, she asserted that she did not know if he lived there every day during this period (R. 26, 29, 30). Disturbed by the presence of a colored man in her apartments, she reported the situation to the police (R. 23).

Detectives Stanley Marcus and Nicolas Valeriana of the Miami Beach Police Department went to Hoffman's apartment at 7:15 p.m., February 23, 1962, to investigate a charge of neglect of her minor son (R. 35, 44). They knocked at the door and a man's voice answered, "Connie, come in," but the door was not opened (R. 51). Valeriana went to the back of the apartment and found McLaughlin leaving through the rear door (R. 70). In the questioning which followed, McLaughlin admitted that he had been living there with Hoffman (R. 46) and that on one occasion he had had sexual relations with her (R. 47). The detec-

tives also observed a few pieces of McLaughlin's wearing apparel in the room (R. 45). Appellant Hoffman came to the police station where McLaughlin was being held and while there stated that she was living with him but thought that this was not unlawful (R. 48). At trial Detective Valeriana identified her as a white woman, using his "many personal observations and experiences" as a standard (R. 59). On the basis of his "factual contacts, experiences and observations," he characterized Dewey McLaughlin as a Negro (R. 58, 65).

Joseph DeCesare, a secretary in the City Manager's Office, testified that while securing a civilian registration card, McLaughlin stated in January 1961 that he "was separated and that his wife's name was Willie McLaughlin" (R. 74, 75). Dorothy Kaabe, a child welfare worker in the Florida State Department of Public Welfare, testified that in an interview on March 5, 1962, appellant Hoffman stated that she began living with McLaughlin as her common law husband in September or October 1961 (R. 83, 84).

March 1, 1963, an information was filed against appellants charging them with violating F. S. A. §798.05 (R. 3). Motion to quash the information on grounds that it was vague and deprived them of due process and equal protection of the laws was denied (R. 5, 6). Motions for a directed verdict arguing that F. S. A. §1.01(6) (defining the term "Negro" as used in F. S. A. §798.05) was vague (R. 61) and that race remained unproven were made and denied (R. 88-89).

The trial judge instructed the jury that in Florida a Negro and a white person could not have been lawfully married, either by common law or formal ceremony (R. 94).

Appellants were convicted by a jury and sentenced to 30 day jail terms and fines of $150 (R. 7-9).

A motion for new trial was filed alleging error in the court's failure to quash the information as a violation of Fourteenth Amendment rights (R. 10, 11) and was denied (R. 11).

On appeal to the Supreme Court of Florida appellants assigned errors relying on the due process and equal protection clauses of the Fourteenth Amendment (R. 12).

The Court, in affirming the conviction, discussed only F. S. A. §798.05 which it found constitutional in light of *Pace* v. *Alabama*, 106 U. S. 583 (R. 99-102). Its jurisdiction derived from the trial court's passing on the validity of a state statute (R. 99).

In the Florida Supreme Court, appellant's brief also argued that the instruction to the jury on Florida's miscegenation law contravened the Fourteenth Amendment (Tr. of Record (on file in this Court) 180-183). The State urged that miscegenation laws were constitutional and that the instruction could only be harmless error (Tr. of Record 195-199). Appellants sought rehearing, attempting to secure the Florida Supreme Court's discussion of this issue (R. 102-103), but rehearing was denied without opinion (R. 105).

Summary of Argument

I.

Appellants were convicted of a crime under an explicitly racial Florida law, which punishes an interracial couple for acts which are not prohibited if committed by persons of the same race. No other Florida statute, including the lewdness law (F. S. A. §798.02), contains the identical elements of the crime defined in F. S. A. §798.05 used to convict petitioners. Florida has advanced no justification for the racial distinctions made by this law. The racial clas-

sification is unreasonable, and this Court should strike it down as it has every other segregation law from *Buchanan* v. *Warley*, 245 U. S. 60 to *Peterson* v. *Greenville*, 373 U. S. 244. This case is different from *Pace* v. *Alabama*, 106 U. S. 583, but if the reasoning of *Pace* extends to cover this case, *Pace* should be overruled as inconsistent with many subsequent decisions in this Court.

II.

The trial court's jury instructions based on Florida's laws prohibiting interracial marriages (F. S. A. Const., Art. 16 §24; F. S. A. §§741.11, 741.12) prevented the jury from considering appellants' possible common law marriage. The jury instruction was not harmless since Florida recognizes common law marriage, there was sufficient evidence to go to the jury on the question, and the state had the burden of proving that appellants were not married to each other.

The states have power to control many aspects of marriage, but no power to prohibit marriage on the basis of irrational discriminations. Florida has advanced no reason to support this racial distinction. Arguments advanced by other states fly in the face of all scientific knowledge which rejects the theories of "pure races," and Negro inferiority. The miscegenation laws are relics of slavery based on race prejudice. State enforcement of these laws violates the Fourteenth Amendment for the same reasons that all segregation laws have been invalidated.

III.

To convict under F. S. A. §798.05 Florida had to prove that McLaughlin was a "Negro" (as defined in F. S. A. §1.01(6)), and that Hoffman was "white" (nowhere defined in Florida law). The state made no effort to prove race by reference to the Florida statutory definition (decreeing

that a Negro is a person with "one-eighth or more of African or Negro blood"). The definition is meaninglessly circular and based on assumptions contrary to scientific fact. If the definition is taken literally the conviction violates due process, being based on no evidence of an element of the offense. But Florida relied on an "appearance" test, sanctioned by the trial judge, using opinion testimony by a policeman to prove race. The appearance test removes any pretense of statutory clarity and depends entirely on varying individual perceptions. This standard is far too vague to support criminal convictions. The vagueness of legal definitions of race vitiates crimes depending upon a person's race.

ARGUMENT

I.

Appellants Were Convicted Under a Law Which Makes Race an Element of the Crime, Punishing a Negro and a White Person for Acts Not Prohibited When Done by Persons of the Same Race, and Thus Violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

The statute under which the appellants were prosecuted and convicted, F. S. A. §798.05, proscribes the habitual occupancy of a room by an interracial couple.[1] As an ostensible effort to restrain illicit sexual relations, the statute might seem to fall within the state's traditional power to

[1] "798.05 *Negro man and white woman or white man and Negro woman occupying same room.*

Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall each be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars."

punish acts which affront public morality. Yet, the means by which Florida purports to serve this goal violate the Fourteenth Amendment by introducing a racial distinction into the State's criminal laws, by a statute in which sexual relations are not even an element of the crime.

Section 798.05 defines a crime that can be committed only by two persons of opposite sex, when one is Negro and the other is white. Appellants submit that no Florida statute punishes similar conduct by persons of the same race. But Florida has argued that F. S. A. §798.05 covers the same act which is punished irrespective of race by F. S. A. §798.02 which prohibits (and provides a greater penalty for) lewd and lascivious association and cohabitation.[2] The relevant Florida decisions, though, leave little room for such an interpretation.

There are three elements of the offense created by §798.05: 1) there must be a habitual occupancy of and living in a room in the nighttime, 2) the offenders must be a Negro man and white woman or white man and Negro woman, and 3) they must be persons who are not married to each other. *Parramore* v. *State*, 81 Fla. 621, 88 So. 472 (1921); *Wildman* v. *State*, 157 Fla. 334, 25 So. 2d 808 (1946); and see charge to jury at R. 93. Sexual relations between the parties are not a necessary element of the crime created by §798.05. *Parramore* v. *State*, *supra*.

On the other hand, it is well established that to convict for lewd and lascivious association and cohabitation

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[2] "F.S.A. §798.02. *Lewd and lascivious behavior.*

If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, is guilty of open and gross lewdness and lascivious behavior, they shall be punished by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding three hundred dollars."

(§798.02), the state must prove "both a lewd and lascivious intercourse and a living together as in the conjugal relation between husband and wife." *Wildman* v. *State, supra*, 25 So. 2d at 808; *Pinson* v. *State*, 28 Fla. 735, 9 So. 706 (1891); *Whitehead* v. *State*, 48 Fla. 64, 37 So. 302 (1904); *Luster* v. *State*, 23 Fla. 339, 2 So. 690 (1887); *Cloud* v. *State*, 64 Fla. 237, 60 So. 180 (1912); *Langford* v. *State*, 124 Fla. 428, 168 So. 528 (1936). Sexual intercourse is very definitely an element of this crime, and single or occasional acts of incontinence will not sustain a conviction under §798.02. *Wildman* v. *State, supra; Penton* v. *State*, 42 Fla. 560, 28 So. 774 (1900); *Thomas* v. *State*, 39 Fla. 437, 22 So. 725 (1897).

Clearly, §798.05 (living in the same room) and §798.02 (lewdness) are distinct both on their face and as interpreted. Florida, in fact, has simultaneously prosecuted persons under both statutes, and in reversing both convictions the Florida Supreme Court gave no indication that it regarded the laws as identical.[3] *Wildman* v. *State*, 157 Fla. 334, 25 So. 2d 808 (1946). It is notable that in reversing the convictions under both statutes in *Wildman, supra*, the case was remanded for new trial without the slightest intimation that the state could not again proceed on both charges. *Wildman* is apparently still good law; it was followed in *Callen* v. *Florida*, 94 So. 2d 603 (1957).

Florida, thus, has created a specific crime, relating exclusively to interracial couples. Mere proof that an unmarried man and woman of the same race habitually occu-

[3] It would have been unusual for the Florida Supreme Court, unless clearly compelled, to attribute to its legislature the meaningless gesture of duplication. It has not done so. Surely the legislature had some difference in mind when it set different punishments in §798.02, and §798.05. Compare §798.03 (fornication generally: 3 months imprisonment and $30 fine) with §798.04 (white person and Negro living "in adultery or fornication": 12 months imprisonment and $1,000 fine).

pied a room in the nighttime would not establish a crime under Florida law.[4]

By labeling "criminal" conduct that might be otherwise innocent, merely because the parties are of different races, Florida has violated its duty to afford to all persons the equal protection of the laws. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi* v. *United States*, 320 U. S. 81, 100. And see, *Korematsu* v. *United States*, 323 U. S. 214, 216; *Brown* v. *Board of Education*, 347 U. S. 483; *Hamilton* v. *Alabama*, 376 U. S. 650; *Anderson* v. *Martin*, 379 U. S. 399.

Florida, however, has not advanced (and cannot advance) any constitutionally acceptable basis for making the conduct described by §798.05 a crime only when persons of different races are involved. Surely, there is no justification for eliminating solely on a racial basis the requirements of proof that the state must meet in other crimes against public morality. The racial classification is unreasonable, is not clearly related to any legitimate governmental objective, and violates the due process and equal protection clauses of the Fourteenth Amendment. Cf. *Buchanan* v. *Warley*, 245 U. S. 60; *Bolling* v. *Sharpe*, 347 U. S. 497.

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[4] Cf. *Grice* v. *State*, 76 Fla. 751, 78 So. 984 (1914), where defendants were acquitted of adultery (F. S. A. §798.02) since there was no showing of sexual relations though there was evidence they frequently slept in the same room along with others. Such conduct would seem covered by a charge under F. S. A. §798.05 if persons of different races engaged in it. The Court said that the "mere living together of two persons of opposite sexes, either of whom is married to a third person, does not constitute the offense of living in an open state of adultery, but there must be acts of sexual intercourse between them to constitute adultery. . . ." The adultery law (§798.01) is the analogue of the lewdness law (§798.02) for persons married to others.

As early as 1896, this Court said that criminal justice must be administered "without reference to consideration based on race," *Gibson* v. *Mississippi*, 162 U. S. 565, 591. From *Buchanan* v. *Warley*, 245 U. S. 60, to *Peterson* v. *Greenville*, 373 U. S. 244, the Court has repeatedly struck down laws attempting to require separation of the races by imposing criminal penalties. See e.g. *Dorsey* v. *State Athletic Commission*, 359 U. S. 533, affirming 168 F. Supp. 149 (E. D. La. 1958) (interracial boxing a crime; held, unconstitutional); *Holmes* v. *Atlanta*, 350 U. S. 879, reversing 223 F. 2d 93 (5th Cir. 1955) (desegregated golf matches criminal; held unconstitutional); *Brown* v. *Board of Education*, 347 U. S. 483; *Gayle* v. *Browder*, 352 U. S. 903, affirming 142 F. Supp. 707 (M. D. Ala. 1956); *Johnson* v. *Virginia*, 373 U. S. 61; *Lombard* v. *Louisiana*, 373 U. S. 267; *Wright* v. *Georgia*, 373 U. S. 284.

In short, "race is constitutionally an irrelevance" (*Edwards* v. *California*, 314 U. S. 160, 185), and ". . . discriminations based on race alone are obviously irrelevant and invidious." *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192, 203; cf. *Abington School District* v. *Schempp*, 374 U. S. 203 (Justice Stewart dissenting); *Goss* v. *Board of Education*, 373 U. S. 683, 687-688. In the words of the first Justice Harlan, the Constitution is "color blind," *Plessy* v. *Ferguson*, 163 U. S. 537, 558 (dissenting opinion). The decision below is in the teeth of this Court's repeated holdings that racial segregation laws are invalid.

This case is somewhat different from *Pace* v. *Alabama*, 106 U. S. 583, where the conduct alleged was criminal irrespective of the race of the parties, although greater penalties were proscribed when the offenders were not of the same race. Here no penalties are provided for men and women of the same race who commit the acts mentioned in F. S. A. §798.05. (Substantially lower penalties are inflicted under the fornication law—F. S. A. §798.03.) But appel-

lants have no hesitancy in urging that *Pace* should be overruled if its reasoning is thought to extend to this case, and to support the distinction made here. The *Pace* decision rested on the notion that the state can treat an act differently when committed by persons of different races, and punish it as a "different" crime. The silent premise is that the states can segregate the races. *Pace* stands as an isolated vestige of the "separate but equal" era inconsistent with the entire development of the law of equal protection since *Brown* v. *Board of Education*, 347 U. S. 483, or perhaps even since *Buchanan* v. *Warley*, 245 U. S. 60. This Court has cited *Pace* only two times in the eighty-two years since it was decided and race discrimination was not an issue in either of those cases.[5] It ought to be overruled. Probably no segregation law would ever have been invalidated if this Court followed the reasoning of *Pace* that equality is assured merely because Negro and white codefendants are liable to the same punishment. Indeed, most segregation laws struck down in recent years have been indiscriminately applicable to both Negro and white violators of the segregation commands,[6] but have nevertheless been invalidated on the ground that states serve no legitimate governmental functions by segregating the races. Cf. *Peterson* v. *Greenville*, 373 U. S. 244; and see *Goss* v. *Board of Education*, 373 U. S. 683, 687-688; *Shelley* v. *Kraemer*, 334 U. S. 1, 22.

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[5] See, e.g., *Moore* v. *Missouri*, 159 U. S. 673, 678 (1895); *Hill* v. *United States ex rel. Weiner*, 300 U. S. 105, 109 (1937).

[6] See, for example, the segregation laws invalidated in *Brown* v. *Board of Education (Briggs* v. *Elliott)*, 347 U. S. 483 (S. C. Code 1952, §5377), and *Gayle* v. *Browder*, 352 U. S. 903, affirming 142 F. Supp. 707, 710 (M. D. Ala. 1956) (Ala. Code 1940, §301 (31c)).

II.

Appellants Were Denied Rights Under the Due Process and Equal Protection Clauses of the Fourteenth Amendment by Florida's Miscegenation Laws Which Had the Effect of Requiring the Jury to Disregard Evidence of a Common Law Marriage If It Decided That One Appellant Was White and That the Other Was Negro.

The trial court's instructions to the jury based on Florida's miscegenation laws deprived appellants of the possibility of acquittal on the ground of common law marriage because of race. As the language of the statute makes clear, marriage of the parties absolutely vitiates any prosecution based upon F. S. A. §798.05. The trial court, however, instructed the jury so as to effectively prohibit it from finding that appellants were married if it found that one was white and the other was Negro.[7] This instruction was required by Florida Constitution, Art. 16, §24,[8] and by F. S. A. §§741.11[9] and 741.12,[10] which prohibit and penalize marriages between white and Negro persons.[11]

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[7] In charging the jury the judge said (R. 94):

"I further instruct you that in the State of Florida it is unlawful for any white female person residing or being in this state to intermarry with any Negro male person and every marriage performed or solemnized in contravention of the above provision shall be utterly null and void."

[8] "24. *Intermarriage of white persons and negroes prohibited*

Sec. 24. All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited."

[9] "741.11 *Marriages between white and negro persons prohibited*

It is unlawful for any white male person residing or being in this state to intermarry with any negro female person; and it is in like manner unlawful for any white female person residing or being in this state to intermarry with any negro male person; and every marriage formed or solemnized in

Before dealing with the constitutionality of the miscegenation laws, we shall treat the state's argument that the jury instruction was harmless even if erroneous and that the validity of the miscegenation laws may not be decided in this case. The error *was* harmful, and several factors lead to the conclusion that the binding jury instruction may have deprived appellants of an opportunity for acquittal.

First, Florida gives full recognition to common law marriage and accords it the same legal incidents as a formal marriage. *Chaachou* v. *Chaachou*, 73 So. 2d 830 (Fla. 1954); *Navarro Inc.* v. *Baker*, 54 So. 2d 59 (Fla. 1951). Indeed, in this case the trial judge instructed the jury as to Florida law on common law marriage (R. 94). This implies that he deemed the marriage issue sufficiently involved to require the jury to decide it, if it found that appellants were of the same race.

Secondly, the evidence taken in its most favorable light tends to establish that appellants had contracted a common

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contravention of the provisions of this section shall be utterly null and void, and the issue, if any, of such surreptitious marriage shall be regarded as bastard and incapable of having or receiving any estate, real, personal or mixed, by inheritance."

[10] "741.12. *Penalty for intermarriage of white and negro persons*

If any white man shall intermarry with a negro, or if any white woman shall intermarry with a negro, either or both parties to such marriage shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars."

[11] In addition, Florida prohibits county judges from issuing marriage licenses to Negro and white couples (F. S. A. §741.13), and ministers and other persons from performing a ceremony of marriage for an interracial couple (F. S. A. §741.15). The penalties for violations are respectively 2 years imprisonment and $1,000 fine (F. S. A. §741.14) and one year and $1,000 (F. S. A. §741.16).

law marriage. There was enough evidence elicited from the State's witnesses to create an inference of common-law marriage so as to constitute a jury question.

Although there was testimony that McLaughlin had in January 1961 made a statement that he was "separated" from Willie May McLaughlin (whose last address he did not know) (R. 74), there was no explanatory or corroborating evidence before the jury indicating a prior legal marriage, or that a prior wife was still alive, or that there had been no divorce during the intervening year before this charge was brought. Appellant Hoffman held herself out in conversations with her landlady and in "signing in" at the apartment as being married to McLaughlin (R. 23). She did the same thing in conversation with a welfare worker who testified that appellant said that "she began living with Mr. McLaughlin as her common-law husband" (R. 84). Whatever the effect of the other statements mentioned by the welfare worker—who seemingly did not distinguish between a "ceremonial" marriage and a "legal" one—any conflicts or inconsistencies should have been resolved by the jury. All of these matters might have been weighed by the jury in appraising the evidence if the instruction had been different.

Statements by the parties to each other of present and binding intention to be married effect a common law marriage in Florida. *LeBlanc* v. *Yawn*, 99 Fla. 467, 126 So. 789 (1930); *In re Thompson's Estate*, 145 Fla. 42, 199 So. 352 (Fla. 1940). The testimony of the parties that they uttered to each other words of present intention provides the best evidence of common law marriage. But, where the best evidence cannot be obtained, reputation and cohabitation will raise and support a presumption of common law marriage, *LeBlanc* v. *Yawn*, *supra*. Appellants did not testify and could not be required to, as they enjoyed constitutional privileges against self incrimination in this criminal

proceeding. F. S. A. Const., Declaration of Rights, §12; see also *Malloy* v. *Hogan*, —— U. S. ——, 12 L. ed. 2d 653. Since their own testimony—the best evidence—was therefore not available, testimony as to reputation and cohabitation could have sufficed to satisfy a jury.

Thirdly, the burden was on the State to demonstrate beyond a reasonable doubt that appellants were not married. Although the attorney general has argued that Florida cannot be forced to prove a negative and that marriage constitutes an affirmative defense to be proved by the defendants, Florida law seems to be otherwise. In his charge the trial judge listed non-marriage as one of the elements to be proved (R. 93). In *Orr* v. *State*, 129 Fla. 398, 176 So. 510, 511 (1937), where defendants were prosecuted under a law punishing "[w]hoever, not standing in the relation of husband or wife . . . maintains or assists the principal or accessory before the fact or gives the offender any other aid, knowing that he has committed a felony . . . ", the court held that the burden of proving the non-existence of common law marriage rested upon the state. Well-settled rules of Florida practice, moreover, require the state to prove each and every element of the offense and the allegations in the information. See, *Campbell* v. *State*, 92 Fla. 775, 109 So. 809 (Fla. 1926); *Lewis* v. *State*, 53 So. 2d 707 (Fla. 1951). The information filed against appellants charged them with "not being married" (R. 3).

Thus the constitutionality of the miscegenation law is involved. This Court has never ruled on the issue. *Pace* v. *Alabama*, *supra*, did not involve a marriage. Although the statute in *Pace* forbade intermarriage (as well as adultery and fornication) no charge of intermarriage was made. No decision on the merits of this issue was rendered in either *Naim* v. *Naim*, 350 U. S. 891, app. dismissed 350 U. S. 985, or *Jackson* v. *Alabama*, 348 U. S. 888 (denial of certiorari).

The states have traditionally exercised a great degree of control over the institution and incidents of marriage. Yet, in this matter, as in others, the state's power is not untrammelled, but must yield to the constitutional strictures of due process and equal protection. Cf. *Meyer* v. *Nebraska*, 262 U. S. 390. The right to marry is a protected liberty under the Fourteenth Amendment; it is one of the "basic civil rights of man." *Skinner* v. *Oklahoma*, 316 U. S. 535, 541. In *Meyer* v. *Nebraska*, *supra*, the Court declared (262 U. S. 390, 399):

> While this Court has not attempted to define with exactness the liberty thus guaranteed [by the Fourteenth Amendment], the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to . . . marry, establish a home and bring up children. . . .

The right to choose one's own husband or wife is clearly a right going to the very heart of personal liberty and freedom. A government that interferes with personal choice in marriage is regulating one of the most vital areas of its citizens' lives. The due process and equal protection clauses surely prevent the states from engaging in irrational discriminations in this vital area of personal liberty.[12]

Therefore, it is not enough for Florida to insist that it can, without limit, abridge the liberty of persons to marry under the guise of the police power. Who would doubt, for

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[12] Cf. *Perez* v. *Lippold*, 32 Cal. 2d 711, 198 P. 2d 17, 19 (1948): "Marriage is thus something more than a civil contract subject to regulation by the state; it is a fundamental right of free men. There can be no prohibition of marriage except for an important social objective and by reasonable means."

example, that Florida could not validly ban marriages between Republicans and Democrats, or between redheads and brunettes. The states cannot prohibit marriage on any irrational basis they choose. In prohibiting marriage on a racial basis, Florida has advanced no rational justification for the discrimination effected.

But while it has advanced no reasons, those which it might be expected to bring forth in an effort to validate its miscegenation laws are plainly suspect. On their face, these racial laws run counter to the "color-blindness" of the Constitution. *Plessy* v. *Ferguson*, 163 U. S. 537, 558 (dissenting opinion); cf. *Korematsu* v. *United States*, 323 U. S. 214.

Some courts have upheld miscegenation statutes, predicating their reasonableness on beliefs in the value of "racial purity." It has been said that a purpose is preventing the mixing of "bloods." *State* v. *Pass*, 59 Ariz. 16, 121 P. 2d 882 (1942). In *Lonas* v. *State*, 50 Tenn. 310, 311 (1871), the Court stated:

> The laws of civilization demand that the races be kept apart in this country. The progress of either does not depend on an admixture of blood.
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> • • •
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> [Intermarriage would be] a calamity full of the saddest and gloomiest portent . . . .

A Georgia court announced that:

> Such [moral and social] equality does not exist and never can. The God of nature made it otherwise, and no human law can produce it and no human tribunal can enforce it. . . . From the tallest archangel in Heaven, down to the meanest reptile on earth, moral and social inequalities exist and must continue to exist

through all eternity. (*Scott* v. *Georgia*, 39 Ga. 321, 326, (1869).)

Some courts have found a justification for these laws in the state's power to preserve and ensure the health of their citizens, as Missouri's court did in 1883[13] and as a Georgia court did in 1869.[14]

Clearly all of these grounds for miscegenation[15] laws rest on theories long deemed nonsensical throughout the world's community of natural scientists. The idea of "pure races" has long been abandoned by science. The distinguished American geneticist Theodosius Dobzhansky has said:

> The idea of a pure race is not even a legitimate abstraction; it is a subterfuge used to cloak one's ignorance of the phenomenon of racial variation. (Dobzhansky, "The Race Concept in Biology," *The Scientific Monthly*, LII (Feb. 1941), pp. 161-165.)

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[13] "It is stated as a well authenticated fact that if the issue of a black man and a white woman and a white man and a black woman intermarry, they cannot possibly have any progeny, and such a fact sufficiently justifies those laws which forbid the intermarriage of blacks and whites. . . ." *State* v. *Jackson*, 80 Mo. 175, 179 (1883).

[14] "The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observations show us, that the offspring of these unnatural connections are generally sick and effeminate, and that they are inferior in physical development and strength to the full-blood of either race. . . . Such connections never elevate the *inferior* race to the position of *superior*, but they bring down the *superior* to that of the *inferior*. They are productive of evil, and evil only, without any corresponding good." (Emphasis added.) *Scott* v. *Georgia*, 39 Ga. 321, 323 (1869).

[15] Even the word "miscegenation," to refer to intermarriage, was reportedly invented as a hoax in an 1864 political pamphlet connected with a presidential campaign. See discussion in Montague, *Man's Most Dangerous Myth: The Fallacy of Race*, 400 (4th ed. 1964).

And see the many scientific authorities rejecting the "pure race" idea collected in Weinberger, "A Reappraisal of the Constitutionality of Miscegenation Statutes," 42 Cornell L. Q. 208, 217, n. 68.[16]

The 1952 UNESCO Statement On The Nature of Race,[17] prepared by distinguished natural scientists from around the world, concludes:

> There is no evidence for the existence of so-called "pure" races. Skeletal remains provide the basis of our limited knowledge about earlier races. In regard to race mixture, the evidence points to the fact that human hybridization has been going on for an indefinite but considerable time. Indeed, one of the processes of race formation and race extinction or absorption is by means of hybridization between races. As there is no reliable evidence that disadvantageous effects are produced thereby, no biological justification exists for prohibiting intermarriage between persons of different races.

Similarly, other pseudoscientific props for racism, including the notions of biological disadvantages of race mixture; and the assumption that cultural levels depend on racial factors, are completely undermined by modern scientific knowledge.[18] For example, the 1952 UNESCO Statement, *supra*, concludes by saying:

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[16] See also Note, 58 Yale L. J. 472 (1949).

[17] The full title is: "Statement on the Nature of Race and Race Differences—by Physical Anthropologists and Genticists, September 1952," published by UNESCO. The statement, published in numerous publications by UNESCO (as well as a similar 1950 UNESCO statement of social scientists) is conveniently available in Appendix A of Montague, *op. cit.*, 361 et seq.

[18] The importance of environmental factors in determining cultural levels was noted by the court in *Perez* v. *Lippold*, 32 Cal. 2d 711, 198 P. 2d 17, 24-25 (1948). Major contemporary research

9. We have thought it worth while to set out in a formal manner what is at present scientifically established concerning individual and group differences.

(1) In matters of race, the only characteristics which anthropologists have so far been able to use effectively as a basis for classification are physical (anatomical and physiological).

(2) Available scientific knowledge provides no basis for believing that the groups of mankind differ in their innate capacity for intellectual and emotional development.

(3) Some biological differences between human beings within a single race may be as great or greater than the same biological differences between races.

(4) Vast social changes have occurred that have not been connected in any way with changes in racial type. Historical and sociological studies thus support the view that genetic differences are of little significance in determining the social and cultural differences between different groups of men.

(5) There is no evidence that race mixture produces disadvantageous results from a biological point of view. The social results of race mixture whether for good or ill, can generally be traced to social factors.

And see, generally, Montague, *Man's Most Dangerous Myth: The Fallacy of Race* (4th ed. 1964), for a noted anthropologist's full discussion of the most recent scientific evidence and research on race.

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demonstrating the absence of any relation between race and cultural achievement is found in Beals and Hoijer, *An Introduction to Anthropology* 195-198 (1953); Hankins, *The Racial Basis of Civilization* 367-371 (1926); Kroeber, *Anthropology* 190-192 (1948); Ashley Montague, *An Introduction to Physical Anthropology* 352-381 (1951); Yerkes, "Psychological Examining in the U. S. Army," 15 Mem. Nat Acad. Sci. 705-742 (1921).

Actually, the miscegenation laws never really rested on any firm scientific foundation nor were they intended to serve a scientific purpose. Miscegenation laws grew out of the system of slavery and were based on race prejudices and notions of Negro inferiority used to justify slavery, and later segregation.

Chief Justice Taney said in *Scott* v. *Sanford*, 19 How. 393, 409 (1857):

> [The miscegenation laws] show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the persons who joined them in marirage. . . . *This stigma, of the deepest degradation, was fixed upon the whole race* (emphasis added).

As an earlier Alabama court, which found a miscegenation statute unconstitutional, announced in *Burns* v. *State*, 48 Ala. 195, 197 (1872):[19]

> It cannot be supposed that this discrimination was otherwise than against the negro, on account of his servile condition, because no state would be so unwise as to impose disabilities in so important a matter as marriage on its most favored citizens, without consideration of their advantage.

The fact that the miscegenation doctrine relates to the caste system, rather than to any design to protect race

[19] *Burns* was overruled in *Green* v. *State*, 58 Ala. 190 (1877).

"purity", is confirmed by the harsh treatment of the children of such marriages.[20]

These are laws with a "purely racial character and purpose," like the regulations in *Goss* v. *Board of Education*, 373 U. S. 683, 688. Miscegenation laws are "relics of slavery"[21] and their enforcement by the states violates the Fourteenth Amendment.[22] This Court has struck down numerous segregation laws rejecting all manner of state claims of Negro inferiority, and claims of the legitimacy of governmentally required and encouraged racism. *Brown* v. *Board of Education*, 347 U. S. 483; *Cooper* v. *Aaron*, 358

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[20] For example, F. S. A. §741.11 declares that the issue of interracial marriages "shall be regarded as bastards." It, in addition, renders them "incapable of having or receiving any estate, real, personal or mixed by inheritance." Florida, where the parents are of one race, has modified the rigors of the common law dealing with bastardy. F. S. A. §731.29. This latter class of illegitimate children can inherit property from the mother. Through acknowledgment by the father they are enabled to inherit through him. *Wall* v. *Altbello*, 49 So. 2d 532 (1950). Yet, issue of interracial marriages cannot be legitimized and can never inherit property. Children can ordinarily be legitimized by the subsequent marriage of the parents. Where, however, the parents are of different races, F. S. A. §741.11 prevents them from legitimizing their children in this manner. See also, Note, "Rights of Illegitimates Under Federal Statutes," 76 Harv. L. Rev. 337 (1962), for the possible impact of Florida miscegenation laws on federally created rights.

[21] Cf. *Bell* v. *Maryland*, —— U. S. ——, 12 L. ed. 2d 822, 871, 877 (separate opinion of Justice Douglas). F. S. A. §741.11 is derived from Fla. Act. Jan. 23, 1832, §§1, 2. Miscegenation laws now remain in effect in only nineteen states; see appendix, *infra*.

[22] Florida's belated argument that the Fourteenth Amendment is not binding on it because improperly proposed in the Senate is frivolous. But responsive to Florida's argument concerning the vote needed to propose a constitutional amendment, see *National Prohibition Cases*, 253 U. S. 350, 386 (two-thirds of those present); cf. *Missouri Pacific Railway Co.* v. *Kansas*, 248 U. S. 276. On June 8, 1866, the Senate had a quorum; 44 members were present; 33 of those present (far more than two-thirds) voted in favor of the proposed amendment. 46th Cong. Globe, part 4, p. 3042 (39th Cong., 1st Sess.).

U. S. 1; *Goss* v. *Board of Education*, 373 U. S. 683; *Johnson* v. *Virginia*, 373 U. S. 61; *Peterson* v. *Greenville*, 373 U. S. 244; *Lombard* v. *Louisiana*, 373 U. S. 267; *Wright* v. *Georgia*, 373 U. S. 284; *Watson* v. *Memphis*, 373 U. S. 526; *Anderson* v. *Martin*, 379 U. S. 399; *Shelley* v. *Kraemer*, 339 U. S. 1; *Buchanan* v. *Warley*, 245 U. S. 60; *Gayle* v. *Browder*, 352 U. S. 903.[23] The logic of those cases compels the same result here.

The issue is whether under our Constitution Negroes will have the same personal liberties and the same status as citizens given to white Americans. There can be but one answer if the purposes of the Fourteenth Amendment are to be realized in our law.

[23] Cf. *Perez* v. *Lippold*, 32 Cal. 2d 711, 198 P. 2d 17 (1948) (invalidating California's miscegenation law; and see *Burns* v. *State*, 48 Ala. 195 (1872), holding an Alabama miscegenation law violative of the Fourteenth Amendment and a federal statute (now 42 U. S. C. §1981) as well. (As noted above *Burns* was overruled by a later Alabama Court.)

III.

Appellants Were Denied Due Process Because Either There Was No Proof of Their Race or Florida's Racial Definition Is Vague.

In order to convict under F. S. A. §798.05, Florida was required to prove beyond a reasonable doubt that appellant McLaughlin was a Negro and that appellant Hoffman was white. Florida law has attempted to define "Negro," but there is no attempt at all to define a white person. The definition of "Negro" in F.S.A. §1.01(6) is:

> . . . (6) The words "negro," "colored," "colored persons," "mulatto" or "persons of color," when applied to persons, include every person having one-eighth or more of African or negro blood.

At the trial in this case the prosecution made no pretense of proving race (an element of the crime) by reference to the statutory rule—"one-eighth or more of African or negro blood." Instead, the prosecutor relied on a policeman's opinion as to the race of both appellants (R. 65), and his opinion was admittedly based merely upon observation of them.

The State surely failed to satisfy the literal requirements of F. S. A. §1.01(6) as to either appellant. This is quite evident from a colloquy between the Court and counsel. Defense counsel objected to opinion evidence on appellants' race saying that the State was bound by the statutory definition which mentioned "blood"; that there was no such thing as "Negro blood"; and that the statute was thus vague (R. 61). The trial judge, after expressing doubt as to his power to declare a state law unconstitutionally vague, said that this one had to be given a "common sense" construction and that it must refer to "anyone whose blood

is 1/8th from a Negro ancestor" (R. 62). When counsel pointed out that there was no proof concerning appellant's ancestors, the Court said, "Then we come back to the appearance again" (R. 63), and ruled that "anybody who had considerable experience in dealing and associating with Negro people and white people will be able to testify to some extent at least as to the race of particular persons" (*Id.*), and that any doubts were going to be "up to the jury" (*Id.*). The policeman was then allowed to express his opinion that McLaughlin was a Negro and Hoffman was white.

It may be noted that the instruction to the jury consisted of a reading of F. S. A. §1.01(6) and a statement that an element of the crime was:

> . . . That one defendant in this case has at least one-eighth Negro blood, and that the other defendant has more than seven-eighths white blood (R. 93).

If the statutory definition and the instruction to the jury are taken literally so as to require proof about "blood" (or even if "blood" is taken to mean "ancestors"), there was a complete absence of proof of an essential element of the crime and the conviction denied due process under *Thompson* v. *Louisville*, 362 U. S. 199. There was no attempt to prove that appellant Hoffman had more than seven-eighths "white blood" or that appellant McLaughlin had more than one-eighth "Negro blood." Such an effort would have been doomed to failure. In the first place, the notion of "Negro blood" and "white blood" rests on the misconception, entirely contrary to the known facts but nevertheless common, that there is some identifiable difference between "Negro blood" and "white blood."[24] Secondly,

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[24] See Montague, *op. cit. supra* at 287, 288:

"The blood of all human beings is in every respect the same, with only two exceptions, that is, in the agglutinating prop-

there was still a failure of proof even using the idea that the statute refers to ancestors. The definition in §1.01(6) is circular insofar as it uses the notion of "Negro blood" to define the word "Negro" and meaningless in its use of "African blood" to define "Negro." Obviously, there are citizens of African nations belonging to every ethnic and anthropological classification. But, in any event, there was no evidence to connect McLaughlin with Africa. The record shows only that he was born in La Ceiba,[25] Honduras (R. 82). Finally, blood has nothing to do with hereditary characteristics. Montague, *op. cit.*, Ch. 14.

The appearance test upon which Florida ultimately relies removes the last pretense of statutory clarity. It totally fails to provide a sufficiently definite standard to meet the requirements of due process. It is based on witnesses' and jurors' opinions of a person's race, depends on their shifting and subjective perceptions influenced by stereotypes

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erties of the blood which yields the four blood groups and in the Rh factor. But these agglutinating properties of the four blood groups and the twenty-one serologically distinguishable Rh groups are present in all varieties of men, and in various groups of men they differ only in statistical distribution. This distribution is a matter not of quality but of quantity. There are no known or demonstrable differences in the character of the blood of different peoples, except that some traits of the blood are possessed in greater frequency by some than by others.

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". . . In short, it cannot be too emphatically or too often repeated that in every respect the blood of all human groups is the same, varying only in the frequency with which certain of its chemical components are encountered in different populations. This similarity cuts across all lines of caste, class, group, nation, and ethnic group. Obviously, then, since all people are of one blood, such differences as may exist between them can have absolutely no connection with blood."

[25] A Central American city, far from Africa; Rand-McNally *Cosmopolitan World Atlas*, p. 56.

and conditioned by their differing personal experiences. In the "never-never land" of the appearance test, a person's race is not an objective fact at all, but depends entirely on other persons' views of him. Differences of opinion and perception as to the race of persons are a commonplace of life which inevitably flow from the multitude of unsatisfactory definitions. This standard obviously leaves the jurors to their own devices in determining race on any basis they choose. To make such a subjective *ad hoc* evaluation the basis for criminal conviction violates elemental standards of fairness. To make a man conduct himself on the basis of a preliminary guess as to what his race will be in the opinion of some future unknown witnesses and jurors who will use no precise standards places liberty on a slippery surface unworthy of a civilized system of criminal law. Cf. *Connally* v. *General Construction Co.*, 269 U. S. 385. This test is easily as nebulous as the phrase "known to be a member of a gang" and the term "gangster" in the New Jersey law invalidated in *Lanzetta* v. *New Jersey*, 306 U. S. 451. The vagueness of legal definitions of race is a substantial reason why the creation of crimes depending on the race of parties violates the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

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APPENDIX

STATES REPEALING MISCEGENATION LAWS IN RECENT YEARS

1. *Arizona* (1962):	Laws 1962, ch. 14, §1, deleting a portion of Ariz. Rev. Stat. §25-101 (1956).
2. *California* (1959):	Stat. 1959, ch. 146, §1, at 2043, repealing Cal. Civ. Code §§60, 69 (1954).
3. *Colorado* (1957):	Colorado Laws 57, §1, at 334, repealing Colo. Rev. Stat. §§90-1-2, 90-1-3 (1953).
4. *Idaho* (1959):	Laws 1959, ch. 44, §1, at 89, deleting Idaho Code Ann. §32-206 (1947).
5. *Montana* (1953):	Laws 1953, ch. 4, sec. 1, repealing Laws 1909, ch. 49, secs. 1-5.
6. *Nebraska* (1963):	Neb. Sess. Laws, at 736 (1963), repealing Rev. Stat. of Neb. §§42-103, 42-328 (1948).
7. *Nevada* (1959):	Nev. Stat. 1959, at 216, 217, repealing Nev. Rev. Stat. tit. 11, ch. 122, 180 (1957).
8. *North Dakota* (1955):	N.D. Stat. 1955, ch. 246, §1, repealing N.D. Code §14-03-04.
9. *Oregon* (1951):	O. R. S. §106.210 (1963), repealing Ore. Code Law. Ann. §§23-1010, 63-102.
10. *South Dakota* (1957):	S.D. Sess. Laws 1957, ch. 38; repealing S.D. Code §14.990 (1939).
11. *Utah* (1963):	Sess. Laws 1963, ch. 43, repealing Utah Stat. §30-1-2 (1953).

STATES REPEALING MISCEGENATION LAWS IN LAST CENTURY

1. *Iowa*: Omitted—1851.
2. *Kansas*: Omitted—1857. Laws c. 49 (1857).
3. *Maine*: Repealed 1883. Laws p. 16 (1883).
4. *Massachusetts*: Repealed 1840. Acts, c. 5 (1843).
5. *Michigan*: Prior interracial marriages legalized in 1883. Act 23, p. 16 (1883).
6. *New Mexico*: Repealed 1886. Laws p. 90 (1886).
7. *Ohio*: Repealed 1887. Laws p. 34 (1887).
8. *Rhode Island*: Repealed 1881. Acts, Jan. Sess. p. 108 (1881).
9. *Washington*: Repealed 1867. Laws pp. 47-48 (1867).

STATES NEVER ENACTING STATUTES WHICH PROHIBIT INTERRACIAL MARRIAGE

1. Alaska	2. Connecticut	3. Hawaii
4. Illinois	5. Minnesota	6. New Hampshire
7. New Jersey	8. New York	9. Pennsylvania
10. Vermont	11. Wisconsin	

STATES AT PRESENT PROHIBITING INTERRACIAL MARRIAGES (PENALTIES FOR INFRACTIONS ARE INDICATED)

1. *Alabama*: Ala. Const. §102; Ala. Code, Tit. 14, §360 (1958); 2-7 imprisonment (idem.).
2. *Arkansas*: Ark. Stat. §55-104 (1947); 1 year imprisonment and/or $250 fine (Ark. Stat. §41-106).
3. *Delaware*: Del. Code Ann., Tit. 13, §101 (1953); $100 fine in default of which imprisonment for not more than 30 days (Del. Code Ann., Tit. 13, §102).
4. *Florida*: Fla. Const. art. XVI, §24; Florida Stat. §741.11 (1961); maximum 10 years imprisonment and/or maximum fine of $1,000 (Fla. Stat. §741.12).
5. *Georgia*: Ga. Code Ann., §53-106 (1933); 1 to 2 years imprisonment (Ga. Code Ann. 53-9903).
6. *Indiana*: Ind. Ann. Stat. §44-104 (Burns, 1952); imprisonment of 1 to 10 years and fine of $100-1000 Ind. Ann. Stat. (Burns, 1952) §10-4222.
7. *Kentucky*: Ky. Rev. Stat. §402.020 (1943); fine of $500 to $1000 and if violation continued after conviction, imprisonment of 3 to 12 months (K.R.S. §402.990).
8. *Louisiana*: La. Civil Code Art. 94 (Dart. 1945); 5 years imprisonment (La. Rev. Stat. Ch. 14, §79).
9. *Maryland*: Md. Ann. Code Art. 27, §398 (1957); imprisonment from 18 months to ten years (idem.).
10. *Mississippi*: Miss. Const. art. 14, §263; Miss. Code Ann. §459 (1942); Imprisonment up to 10 years (Miss. Code Ann. §2000, 1960).
11. *Missouri*: Mo. Rev. Stat. §451.020 (1959); 2 years in state penitentiary; and/or a fine of not less than $100, and/or imprisonment in county jail for not less than 3 months (Mo. Rev. Stat. §563.240).

12. *North Carolina*: N. C. Const. art. XIV, §8; N. C. Gen. Stat. §51-3 (1953); 4 months to 10 years imprisonment (N. C. Gen. Stat. §14-181).

13. *Oklahoma*: Okla. Stat., Tit. 43, §12 (1961); 1 to five years and up to $500 fine (Okla. Stat., Tit. 43, §13).

14. *South Carolina*: S. C. Const. art. 2, §34; S. C. Code §20-7 (1952); imprisonment for not less than 12 months, and/or fine of not less than $500 (idem.).

15. *Tennessee*: Tenn. Const. art. (11), §14; Tenn. Code Ann. §36-402 (1956); 1 to 5 years imprisonment, or, on recommendation of jury, fine and imprisonment in county jail (Tenn. Code Ann. §36-403).

16. *Texas*: Tex. Rev. Civ. Stat. art. 4607 (1948); 2 to 5 years imprisonment (Tex. Penal Code art. 492).

17. *Virginia*: Va. Code Ann. §20-54 (1953); 1 to 5 years (Va. Code Ann. §20-59).

18. *West Virginia*: W. Va. Code Ann. §4697.

19. *Wyoming*: Wyo. Stat. §20-18 (1957); $1000 fine and/or imprisonment up to 5 years (Wyo. Stat. §20-19).